

**Communications
Workers of America**
AFL-CIO, CLC

501 Third Street, N.W.
Washington, D.C. 20001-2797
202/434-1100



November 6, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RECEIVED

NOV - 6 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Secretary:

It has been brought to my attention that page number (6) was missing from the original comments filed on October 29, 1998 in CS Docket No. 98-178. Enclosed is the original and 12 copies of the amended version of our comments.

Sincerely,

A handwritten signature in cursive script, reading 'George Kohl / mdg', is written over the typed name.

George Kohl
Senior Executive Director, Research and Development
Communications Workers of America

cc: Cable Services Bureau (1 copy)
Policy and Rules Division (1 copy)
Policy and Program Planning Division (1 copy)
Satellite and Radio Communication Division (1 copy)
Telecommunication Division (1 copy)
Wireless Telecommunications Bureau (1 copy)
International Transcription Service (1 copy)

Enclosures

No. of Copies rec'd 12
DATE CODE

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED

NOV - 6 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

| | | |
|-------------------------------|---|----------------------|
| In the Matter of |) | |
| |) | |
| Application of AT&T Corp. and |) | CS Docket No. 98-178 |
| TCI Inc. Transfer of Control |) | |

**Comments of
Communications Workers of America**

George Kohl
Patrick Hunt
501 Third St. N.W.
Washington, D.C. 20001
(202) 434-1187 (phone)
(202) 434-1201 (fax)
Phunt@cwa-union.org

Dated: October 29, 1998

Introduction

The Communications Workers of America (“CWA”) represents 630,000 workers who are also consumers of telecommunications services. The majority of CWA members are employed in the telecommunications industry. In the telecommunications industry, CWA members work for firms providing local, long distance, cable, broadcasting, and wireless communications services. CWA is the exclusive representative of workers at AT&T and TCI through collective bargaining agreements. CWA is the leading union in the information age whose members are responsible for building, maintaining, and servicing customers on the information highway. CWA is committed to ensuring that the profit motive is balanced with the public interest as this industry develops.

Commission precedent firmly establishes that the Commission must determine that the proposed merger is in the public interest. Among the public interest concerns that the Commission must consider in the context of a merger review is whether the merger advances and promotes the availability of affordable, quality service, as well as the employment impacts of the merger.

The proposed merger between AT&T and TCI would bring together two companies with very different records in providing quality service to customers. AT&T has a long-standing reputation for the quality of its customer service. This reputation derives in large part from the quality of its workforce. AT&T is recognized as a leading example of a “high performance” work organization, one that excels in quality, customer service based on employment practices that make substantial investments in human capital, including high levels of training, wages, benefits,

union representation, and a globally recognized employee/union involvement program known as “Workplace of the Future.” In contrast, TCI franchises in most communities have a poor reputation for service. TCI’s poor service reputation derives directly from corporate employment policies that fail to invest in its workforce, resulting in a poorly trained, high-turnover, and low-wage workforce that lack the skills, resources, and support (despite workers’ desire) to provide quality customer service.

It is CWA’s belief that the merger between AT&T and TCI serves the public interest to preserve and advance quality service by providing an opportunity to migrate AT&T’s “high performance” employment practices to current TCI operations in the merged AT&T/TCI. To ensure that this is the case, CWA recommends that the Commission as part of this merger review require the Applicants to provide benchmark data to assist the Commission in monitoring workforce- related service quality improvements in the post-merger environment.

I. The FCC Has the Obligation to Determine if the Merger Is in the Public Interest.

In their joint Application, the merging parties request “the grant of their application independent of the FCC’s assessment under the *Bell Atlantic/NYNEX* framework,”¹ citing “the substantial public interest benefits that flow from increased competition.”²

However, the Commission made clear in both its *Bell Atlantic/NYNEX Order* and its *MCI/WorldCom Order*, that Section 310(d) of the Communications Act requires a thorough public interest review, in which the Applicants bear the burden of proof to demonstrate that the proposed merger is in the public interest. Furthermore, the Commission made clear that the statutory public interest merger review standard is a flexible one that encompasses the “broad aims of the Communications Act,” including implementation of Congress’ “pro-competitive” national policy framework designed to “open all telecommunications markets to competition,” “preserving and advancing universal service,” “accelerat[ing] rapidly private sector deployment of advanced telecommunications and information technologies and services,” and the employment impact of the merger.³

¹Application of AT&T Corp. and TCI, Inc., Transfer of Control, Description of Transaction, Public Interest Showing, and Related Demonstrations, Sept. 14, 1998, p. 16 (“Public Interest Showing”).

² Public Interest Showing, p. 14.

³ In the Applications of NYNEX Corp. Transferor, and Bell Atlantic Corp., Transferee, for Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries, *Memorandum Opinion and Order*, File No. NSD-L-96-10 (Aug. 14, 1997), p 2 (“*Bell Atlantic /NYNEX Order*”); In the Matter of Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc., *Memorandum Opinion and Order*, CC Docket No. 97-211 (Sept. 14, 1998), pp. 8-9, 213. (“*MCI/WorldCom Order*”).

The Commission cannot neglect its statutory obligation to conduct a thorough review to ensure that this proposed merger is in the public interest. Granting the application without the complete review required in recent mergers would violate the Commission's statutory mandate and past precedent, as well as undermine the credibility of the Commission and the public's confidence that its interests are being protected.

II. The Public Interest Is Served by Extending High Performance Labor Relations Policy to TCI.

Quality service is of prime importance in the ever-changing communications industry. Quality service is achieved through corporate policies that ensure the proper choice of technologies and the proper installation and maintenance of the systems. Key to quality service is the training and experience of the employees that service consumers and maintain the networks.

In fact, there is a large body of research that establishes that there is a direct link between a firm's employment practices and quality service. Researchers have identified a group of employment practices, collectively known as "high performance" employment practices, which significantly contribute to the ability of that firm to provide quality service to customers. These practices include significant investments in the human capital of the firm, including employee training, good wages and benefits, and programs that involve employees in workplace and corporate decision-making ("employee involvement programs"). A growing body of research finds that Union

representation enhances the ability of firms to implement and sustain these high-performance practices.

A recent survey of the literature on firms that have adopted high-wage, high performance employment practices found that “managers report improvements in quality...[and] improvements in customer satisfaction” after their firms adopted high-wage, high-skill, participative employment practices.⁴ Further, a study by the Work and Technology Institute concluded that high-wage, high-skill employment practices result in such tangible benefits as “more effective companies with higher quality and productivity and greater responsiveness to customer needs.”⁵ Finally, a growing body of research documents that union representation increases the likelihood that high performance work practices will have a lasting impact on improved quality, customer service, and productivity in the workplace because unions assist management in legitimating and institutionalizing the practices, while at the same time providing employees with an independent base of power to protect their interests and to ensure that employees gain their fair share in the economic gains that result from the improved quality and productivity.⁶

⁴ Eileen Appelbaum and Rosemary Batt, *High-Performance Work Systems: American Models of Workplace Transformation*, Washington, D.C.: Economic Policy Institute, 1993, pp. 39-40.

⁵ Michelle Kaminski, Domenick Bertelli, Melissa Moye, and Joel Yudken, *Making Change Happen: Six Cases of Unions and Companies Transforming their Workplaces*, Washington, D.C.: Work and Technology Institated, p. 2.

⁶ Adrienne Eaton and Paula B. Voos, “Unions and Contemporary Innovations in Work Organization, Compensation, and Employee Participation,” in *Unions and Economic Competitiveness*, Lawrence Mishel and Paula B. Voos (ed.), Armonk, NY: M.E. Sharpe, Inc. 1992, pp. 173-207; Paul Wallich, “Look for the Union Label: New Analysis of Economic Data Shows that Unionization Could Maximize Productivity,” *Scientific American*, available at <http://www.sciam.com/1998/0898issue/0898techbus3.html>; *Workplace of the Future at AT&T*, May 1997. mimeo.

AT&T is a nationally and globally recognized “high performance” employer whose employment practices significantly contribute to its record of providing high quality customer service.

AT&T’s human resource investment practices are intimately connected to its mature collective bargaining relationship with the unions that represent its employees. Collective negotiations at AT&T have resulted in the pathbreaking jointly administered Alliance for Employee Development and Growth education and training program, now in its second decade; a jointly administered Work and Family fund that assists employees to balance work and family needs; a nationwide job transfer and placement program to assist employees to move into growth jobs; and, most significantly, wage and benefit standards that promote an experienced, committed, knowledgeable, and stable workforce.⁷ Generally, AT&T has been a progressive employer (while not perfect) with positive labor relations.

In contrast, TCI has chosen what scholars call “low-road” employment policies, in which low-wages, few benefits, little investment in training, unsafe working conditions, poor labor relations, and an excessive use of sub-contracted labor results in a poorly trained, unstable, high-turnover workforce. The cable industry, in general, and TCI, in particular, have been plagued by high levels of customer dissatisfaction stemming from their failure to invest in, and to maintain, a “high performance” workforce.⁸

⁷ Agreement by and between AT&T and the Communications Workers of America, May 10, 1998.

⁸ “Cable Must Pay its Workers Better to Compete with Telcos,” *Multichannel News*, Jan. 15, 1996, p. 57.

The proposed merger between AT&T and TCI has the potential to improve service quality in the cable industry as AT&T's high-performance employment practices migrate to the merged AT&T/TCI.

To ensure that the merger leads to this positive result, which is clearly in the public interest, the Commission should request that the Applicants as part of this merger review provide the Commission with additional information about AT&T's plans to migrate its high-performance employment practices and labor relations strategy to its merged TCI/Consumer unit. In addition, the Commission should request that the Applicants provide additional information about current TCI employment practices so that the Commission can benchmark progress in the post-merger environment. Specifically, the Commission should determine the following: 1) the number of TCI employees working under contract versus the number of permanent employees; 2) the amount of employee turnover at TCI; and 3) the annual dollar amount of TCI investment in employee training. Further, as safety training is almost non-existent at TCI, the Commission should request that the Applicants provide required OSHA logs and accident records for the past five years. This data is important so that the Commission can evaluate the real human capital infrastructure involved in the transaction and will provide a benchmark to measure improvements resulting from the change in ownership.

In addition, TCI has used authorization of its 401(k) retirement plan to discriminate against those who choose a union. TCI has repeatedly refused to include employees represented by a labor organization in its 401(k) retirement plan, while regularly providing 401(k) retirement

benefits to non-union employees. This merger review provides the Applicants an opportunity to recommit to providing consistent AT&T-level benefits to AT&T/TCI employees. Fringe benefits are economically efficient as they are tax deductible and an important tool in providing a quality labor force.

There is Commission precedent for considering employment impacts on the workforce of merged entities. For example, in considering the divestment of Western Union, the Commission asked

What are the exact plans and proposals of the entities which will own, control, or operate the cable system with respect to the persons presently employed including such matters as job security, and pension equities, as well as the continuity and funding of pension equities?⁹

The Commission makes clear that employment impact includes consideration of the wages, benefits and working conditions as appropriate for review. In its Western Union decision, it noted that:

(w)e wish to state that we recognize that the interest of the employees of a common carrier is a factor to be considered in our evaluation of the public interest. We will assume for the purposes of the decision herein that, as urged by ACA, we have the right and indeed the duty to make adequate provision for the protection of employees affected by the proposed divestment.¹⁰

⁹ Western Union Divestment, 30 FCC (1961), p. 300.

¹⁰ *Id.*, p. 367.

The Commission's consideration of employment impact was reconfirmed in the MCI/WorldCom decision.¹¹

Thus, as part of its public interest merger review, the Commission should require the Applicants to provide employment data necessary to ensure that, in the post-merger environment, the merged entity will adopt AT&T's high-performance and generally positive labor relations policies.

III. Conclusion

The Commission has the obligation to ensure that the proposed merger is in the public interest. This includes ensuring that the merger will advance and preserve quality service in the communications industry and have positive impact on employment in the industry. Migrating AT&T's high-performance employment and positive labor relations standards to a merged AT&T/TCI is in the public interest for both these reasons.

¹¹ *MCI/WorldCom Order*, p.213.

Respectfully Submitted,

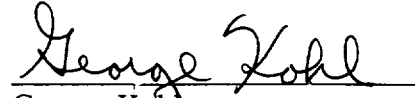
Communications Workers of America

By George Kohl/mdg
George Kohl
Senior Executive Director

Dated: October 29, 1998

CERTIFICATE OF SERVICE

This is to certify that I have duly served these comments upon these parties by depositing copies of same in the United States mail, addressed as follows:


George Kohl

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Deborah Lathen, Chief
Cable Services Bureau
2033 M Street, N.W.
Washington, DC 20554

Royce Dickens
Policy and Rules Division
Cable Services Bureau
2033 M Street, N.W., Room 406
Washington, DC 20554

Quyen Truong
Federal Communications Commission
Policy and Program Planning Division
Common Carrier Bureau
1919 M Street, N.W., Room 544
Washington, DC 20554

Evette Keene
Federal Communications Commission
Video Services Division
Mass Media Bureau
1919 M Street, N.W., Room 712
Washington, DC 20554

Karl Kensinger
Satellite and Radio Communication Division
International Bureau
2000 M Street, N.W., Room 800
Washington, DC 20554

Sherille Ismail
Telecommunications Division
International Bureau
2000 M Street, N.W., Room 800
Washington, DC 20554

Walter Strack
Wireless Telecommunications Bureau
2025 M Street, N.W., Room 5002
Washington, DC 20554

International Transcription Service, Inc.
1231 20th Street, N.W.
Washington, DC 20036